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FIRST REPORT 1996

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The Honourable Allan K. McLean, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its First Report for the First Session of the Thirty Sixth Parliament and commends it to the House.

Toby Barrett, M.P.P.
Chair

Queen's Park
June 1996



**MEMBERSHIP OF THE
STANDING COMMITTEE ON
REGULATIONS AND PRIVATE BILLS**

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ACKNOWLEDGEMENTS

The Committee wishes to express its appreciation to all of the legislative staff who assisted us in our work. In particular, we wish to thank:

- Lisa Freedman, the Committee's Clerk, who performed the procedural, administrative, and organizational duties necessary for the carrying out of our mandate re: the review of regulations;
- Avrum Fenson, Philip Kaye, Andrew McNaught, Paul Murray, Carolyn Stobo, and Susan Swift of the Legislative Research Service who served as Counsel to the Committee, and who conducted the initial examination of over 1,200 regulations. Also on the Committee's behalf, Mr. Kaye corresponded with the various Ministries and prepared a draft report on these regulations;
- Katherine Young, Research Assistant, and Alan MacCharles, Student Research Assistant, Legislative Research Service, who prepared background/statistical information on all of the regulations; and
- Wyley Powell, the Assembly's Coordinator of French Language Services, who assessed the consistency between the English and French versions of regulations.

INTRODUCTION

The Committee presents this Report on regulations filed during most of 1994 (O. Regs. 101/94-819/94) and all of 1995 (O. Regs. 1/95-549/95) in accordance with its Terms of Reference as contained in the *Regulations Act* and the *Standing Orders* of the Legislative Assembly. Our review commenced with O. Reg. 101/94 as the first 100 regulations from 1994 were covered by our predecessor Committee's *Third Report 1994*.

Regulations Act, s. 12

This section (reproduced in Appendix A) states that every regulation stands permanently referred to the Committee. It requires the Committee, when examining regulations, to consider "the scope and method of the exercise" of regulation-making power, but not the underlying policies or legislative objectives. From time to time, the Committee must report to the Assembly "its observations, opinions, and recommendations."

Standing Order 106(k)

This Standing Order (reproduced in Appendix B) prescribes various guidelines for carrying out the Committee's statutory mandate—for instance, there must be statutory authority to make each regulation. The Standing Order stipulates that the Committee cannot draw the attention of the House to a regulation without first affording "the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit."

STATISTICS FOR 1986-1995

Volume of Regulations

The following table provides statistical information on the number of regulations filed during the past ten years:

YEAR	NUMBER OF REGULATIONS
1986	763
1987	725
1988	769
1989	727
1990	702
1991	789
1992	799
1993	953
1994	819
1995	549

Between 1986 and 1994, the average annual number of regulations was 783, with the greatest variation from this average occurring in 1993 when 953 regulations were made. A significant factor underlying the increase in 1993 was the exercise of regulation-making power under 22 health profession Acts passed in 1991 (e.g. *Chiropody Act, 1991*; *Dental Technology Act, 1991*; *Dietetics Act, 1991*). One hundred and nineteen regulations were made under these 22 Acts in 1993.

The total of 549 regulations for 1995 is the lowest figure for the past decade, and represents a drop of 30% from the 1986-94 average. This drop occurred during a year which saw an election and a change of government (June 1995). Going back to 1985, other election years with changes of government—1985 (703 regulations) and 1990 (702 regulations)—also saw fewer regulations, although approximately 150 more than in 1995.

During the final six months of 1995, 218 regulations were filed.

1994

The regulations filed in 1994 were made under the authority of 185 Acts under the administration of 16 Ministries, Management Board of Cabinet, and the Office of Francophone Affairs. Twenty of the Acts (11%) had at least ten regulations made under them and generated one-half of all the regulations. See Appendix C for a complete list of these statutes.

As in 1993, the *Planning Act* (53 regulations), the *Crop Insurance Act* (53), and the *Highway Traffic Act* (44) accounted for more regulations than any other Act. They were followed by the *Provincial Offences Act* (27) and the *Health Insurance Act* (24). Altogether these five Acts produced close to one-quarter of the regulations filed in 1994.

Forty-three percent of the regulations fell under the jurisdiction of three Ministries: the Ministry of Health (141); the Ministry of Municipal Affairs and Housing (107); and the Ministry of Agriculture, Food and Rural Affairs (105). (The same Ministries generated the most regulations in 1993.)* Appendix D lists the number of regulations filed in 1994 which were administered by each Ministry/authority.

*In 1993, the Ministry of Health generated 211 regulations; the Ministries of Municipal Affairs and Housing, a combined total of 158 regulations; and the Ministry of Agriculture, Food and Rural Affairs, 109 regulations.

1995

Along with Management Board of Cabinet, 15 Ministries were responsible for the 549 regulations issued under 131 Acts in 1995. Eleven statutes (compared to 20 in 1994) had ten or more regulations made under each, accounting for one-half of the total regulations. Appendix E contains a list of these statutes.

As in the previous two years, the *Planning Act* (85 regulations), the *Crop Insurance Act* (42), and the *Highway Traffic Act* (33) generated more regulations than any other Act. Almost 30% of the regulations filed in 1995 were made under these Acts.

Once again, a significant number of regulations (50.5%) fell under the authority of the following three Ministries: the Ministry of Municipal Affairs and Housing (121); the Ministry of Agriculture, Food and Rural Affairs (86); and the Ministry of Health (70). See Appendix F for a listing of the number of regulations filed in 1995 which fell under each Ministry/authority.

REGULATIONS REPORTED

The Committee's review of most of the regulations filed during 1994 (that is, the final 719 regulations) and all the regulations filed during 1995 raised various questions about possible violations of the Committee's guidelines. In accordance with Standing Order 106(k), the Committee wrote to 14 Ministries and Management Board inquiring about 26 of the regulations. The Committee wishes to thank these bodies for generally responding with promptness to our letters and for carefully considering our concerns.

After examining the responses, the Committee has decided to comment upon nine regulations. The comments are arranged by Ministry/Board, and under those headings, by the guideline violated.

The Committee found contraventions of the following guidelines:

- **Regulations should be in strict accord with the statute conferring of power ("Statutory Authority"):** one regulation is reported as having prescribed compensation for certain individuals under the *Substitute Decisions Act, 1992*, in the absence of statutory authority to do so (O. Reg. 26/95).
- **Regulations should be expressed in precise and unambiguous language ("Precision of Language"):** four regulations are reported. In two cases, lists of items are ambiguous (O. Regs. 205/94 and 531/94). In the remaining two cases, there is ambiguity as to when certain provisions come into force (O. Reg. 409/94), and in a reference to a section of the authorizing Act (O. Reg. 136/95).
- **Regulations should not have retrospective effect unless clearly authorized by statute ("Retrospectivity"):** Four regulations are reported here as well. These regulations came into force prior to the date on which they were filed with the Registrar of Regulations. The unauthorized retrospectivity ranges from just four and eight days (O. Regs. 446/94 and 122/94 respectively) to approximately 1½ months and four months (O. Regs. 579/94 and 509/94 respectively).

MINISTRY OF THE ATTORNEY GENERAL

Statutory Authority

O. Reg. 26/95 under the Substitute Decisions Act, 1992

S. 1 of this regulation states that for the purposes of s. 40(1) of the *Substitute Decisions Act*, "a guardian of property" or "an attorney under a continuing power of attorney" is entitled to compensation calculated according to a particular formula. At first glance, the authority for this provision appeared to be s. 90(c) of the Act which permitted regulations

prescribing a fee scale for the compensation of guardians of property, including annual percentage charges on revenue and on capital.

S. 90(c), however, referred to compensation for "guardians of property" only, and not for "attorneys under continuing powers of attorney" as well. Accordingly, the part of s. 1 of O. Reg. 26/95 which prescribed compensation for "an attorney under a continuing power of attorney" appeared to be without statutory authority. (We were aware that s. 40(1) of the Act did state that "a guardian of property or attorney under a continuing power of attorney may take annual compensation from the property in accordance with the prescribed fee scale"; but this subsection did not actually confer regulation-making authority. We believed that s. 90(c) was made for that reason, but nonetheless it failed to include attorneys under continuing powers of attorney.)

The Office of the Public Guardian and Trustee responded that a review of the *Substitute Decisions Act, 1992* had been announced by the Government in July 1995. That Office was conducting the review, which would include the Committee's concern. Indeed it wrote that "a statutory amendment in this regard is a possibility."

The House has since passed Bill 19, the *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996*. One of the amendments to the *Substitute Decisions Act* directly addresses the above issue, and provides authority to make regulations which prescribe a fee scale for compensating "attorneys under continuing powers of attorney". (new s. 90(c))

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Retrospectivity

O. Reg. 509/94 under the Child and Family Services Act

O. Reg. 509/94 exempts two "approved services"—the London Psychiatric Hospital Child and Adolescent Unit and the Whitby Psychiatric Hospital Child and Adolescent Unit—from the application of the *Child and Family Services Act* (CFSA) up to March 31, 1995. It further exempts two "approved agencies"—the

Royal Ottawa Hospital Regional Children's Centre and the Sudbury Algoma Hospital Regional Children's Centre—from the application of most of the Act also up to March 31, 1995.

Prior to the making of this regulation, the same exemptions (plus others) had been in effect until March 31, 1994. The Committee wished to determine whether the exemptions in O. Reg. 509/94 continued the previous exemptions and accordingly took effect on April 1, 1994. If so, the regulation would have been retrospective in effect as it was filed on July 25, 1994. There does not appear to be any authority in the *Child and Family Services Act*, however, to make this kind of regulation retrospective.

The Ministry answers that although the regulation did not specifically state that it was to take effect on April 1, 1994, it is the understanding of Counsel (responding for the Ministry) that it was interpreted to apply in this way.

In its response the Ministry explains that the purpose of the regulation is to clarify that the provisions of the *Child and Family Services Act* do not apply to certain facilities where services are provided to children. Such facilities are governed under the *Mental Health Act* as psychiatric facilities. The Ministry then notes that in order to avoid any confusion, the regulation clarifies that the *Child and Family Services Act* does not apply.

The Ministry concludes that it "will, in the future, carefully review any further regulations of this nature under the CFSA to ensure that the Committee's guidelines are honoured."

MINISTRY OF FINANCE

Precision of Language

O. Reg. 409/94 under the Pension Benefits Act

S. 6 of this regulation amends exemptions granted to the Teachers' Pension Plan and the Public Service Pension Plan from certain sections of the *Pension Benefits Act* and the general regulation under that Act (Reg. 909 of R.R.O. 1990). Under s. 6(3), these amendments are "deemed to have come into force on the day on which Ontario Regulation 760/91 came into force (December 20, 1991)."

But O. Reg. 760/91, which established the exemptions in question, did not come into force on December 20, 1991 (its date of filing); rather it expressly came into force on January 1, 1992. The Pension Commission of Ontario has accordingly concluded that "subsection 6(3) should not have referred to December 20, 1991, i.e. it should have omitted any reference to a specific date." It indicates that this error in wording will be corrected the next time amendments are made to the general regulation (Reg. 909).

Retrospectivity

O. Reg. 446/94 under the Interpretation Act

O. Reg. 446/94 prescribes fees payable by a municipality in respect of certain assessments carried out in accordance with the *Assessment Act*. Although the regulation was filed with the Registrar of Regulations on July 5, 1994, the fees prescribed by s. 1 came into force a few days earlier—on July 1, 1994.

Retroactive regulations may be made under the *Assessment Act* as s. 2(3) of that Act provides that

A regulation made under this Act is, if it so provides, effective with reference to a period before it was filed.

O. Reg. 446/94, however, was made under the *Interpretation Act*, not the *Assessment Act*. There is no authority in the former Act to make regulations retroactive.

The Ministry advises that the intention was to make the regulation prospective only. It was made by Cabinet on June 23, 1994, and through some "unforeseen delay" was not delivered to the Office of the Registrar of Regulations until after the July 1 holiday weekend. The Ministry also points out that there was no way to change the wording of the regulation once it had been made. In these circumstances, it concludes that the Committee's guideline on retroactivity has not been violated.

In concluding that there has been no violation, the Ministry has highlighted the date of the making of the regulation (June 23, 1994) as opposed to the date of its filing (July 5, 1994). Indeed the Ministry has suggested that "perhaps the [Committee's] rule should be changed to take into account the date it [the regulation] was made by Cabinet, even though it would not take effect until filing."

The date of filing, however, has a statutory importance, as the Ministry acknowledges. S. 3 of the *Regulations Act* states that

Unless otherwise stated in it, a regulation comes into force and has effect on and after the day upon which it is filed.

We wish to emphasize that we are established as a Committee under the authority of the *Regulations Act* and accordingly we believe that our guidelines should be interpreted in accordance with that Act. Predecessor Committees have taken the same approach and have always based their interpretation of the retroactivity guideline on the date of filing. We see no reason to do otherwise.

This approach is reinforced by statutory provisions, such as the one mentioned above in the *Assessment Act*. In order to authorize retroactivity, s. 2(3) of that Act permits a regulation to be "effective with reference to a period before it was *filed*." [emphasis added]

We therefore conclude that O. Reg. 446/94 "technically" violates our guideline on retrospectivity—albeit by only four days.

MINISTRY OF HEALTH

Precision of Language

O. Reg. 205/94 under the Dentistry Act, 1991

This regulation applies with respect to the appointment of members of the dental profession (apart from members of the governing Council) to committees of the Royal College of Dental Surgeons. S. 4(1) prescribes conditions under which "the Council shall terminate the appointment of [such] a member . . . and shall disqualify a member" Seven conditions are listed, with the word "and" preceding the seventh condition (par. (g)). By using the word "and", the subsection seems to be saying that the member in question must fall within all seven conditions in order to be disqualified. Was this the intention of the provision?

In response to our query, the Ministry has discussed the matter with the Royal College of Dental Surgeons. The College had intended that a member be disqualified if he or she meets one or more of the conditions, but not necessarily all of them.

The Ministry categorizes the problem as "a small but significant drafting error", and has been asked by the College to correct it at the next opportunity.

Retrospectivity

O. Reg. 122/94 under the Physiotherapy Act, 1991

This regulation amends O. Reg. 918/93, the general regulation on the election of members to the Council of the College of Physiotherapists of Ontario. S. 5(1) of O. Reg. 918/93 required that an election be held on the first Wednesday of March 1994—that is, on March 2, 1994—for every electoral district. This requirement was revoked by s. 1 of O. Reg. 122/94 which stated that the election would take place instead on the third Wednesday of March 1994—that is, on March 16, 1994.

The change in election dates was made by the College of Physiotherapists and filed with the Registrar of Regulations on March 10, 1994, which was eight days after the election was to have taken place. This change in election dates, therefore, could be said to be retrospective in effect—it had to have taken effect by March 2, 1994. There is no authority, however, in the *Health Professions Procedural Code* (which is deemed to be part of the *Physiotherapy Act, 1991* and which contains the relevant regulation-making powers) for the College to make regulations retrospective.

The Ministry comments that because of administrative difficulties, the College was unable to comply with the requirement of an election on March 2nd. As a result, it proposed to the Ministry an amendment to O. Reg. 918/93 which would change the election date to March 16, 1994.

The Ministry explained to the College that this would not be possible because of the retroactive nature of the proposed regulation. (It would be filed after March 2, 1994.) The Ministry notes that "on the other hand it was possible for them to ensure that their elections would be valid." This was done by changing

the election date in the regulation, and filing the amendment before the election took place. The Ministry concludes that

The consequence of all this is that the college did unavoidably violate their regulation by not holding elections on March 2, 1994, but held duly authorized elections on March 16, 1994.

Your comments have given us the opportunity to remind the college of the seriousness of these issues.

MANAGEMENT BOARD OF CABINET

Retrospectivity

O. Reg. 579/94 under the Official Notices Publication Act

S. 1 of this regulation prescribes rates payable for publishing items in *The Ontario Gazette*. It further stipulates when the payments must be made, as well as the size of the initial payment. The cost of a single copy of the *Gazette* and a 52-week subscription is set out in s. 2.

Both ss. 1 and 2 (the two substantive sections in the regulation) came into force on August 1, 1994. As the regulation was filed with the Registrar of Regulations on September 14, 1994, it is retrospective in effect. The *Official Notices Publication Act*, however, does not explicitly authorize retrospective regulations.

Management Board responds that the regulation was recommended by Treasury Board on May 31, 1994, and approved and ordered by the Lieutenant Governor in Council on July 20, 1994 to come into effect on August 1, 1994. Accordingly, it explains there was no intention that the regulation have retrospective effect; "the filing after August 1, 1994 was an administrative delay over the vacation season." Management Board adds that Publications Ontario had advertised the increased rates prior to August 1, 1994, and had advised subscribers of increases in the notices of subscription renewal.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

Precision of Language

O. Reg. 136/95 under the Planning Act

In s. 2 of this regulation, the Minister of Municipal Affairs delegates authority to give consents "under sections 50 and 53" of Part VI of the *Planning Act* (which deals with the subdivision of land) to the Parry Sound District Land Division Committee. S. 55(1) of the *Planning Act*, however, authorizes the delegation to a district land division committee of the power to give consents under s. 53 only.

The Ministry acknowledges that it is probably not necessary to refer to section 50 as the power to give consents is contained in s. 53. It states, however, that the order which was used as a precedent contained the same references. The Ministry will be considering this point with Legislative Counsel the next time it drafts a similar order.

O. Reg. 531/94 under the Planning Act

S. 4 of this zoning order prohibits every use of land and every erection or use of buildings or structures on a particular lot, except

- (a) one seasonal dwelling;
- (b) one single dwelling;
- (c) one commercial building; and
- (d) uses, buildings and structures normally incidental or subordinate to the above-noted uses.

It is difficult to determine precisely the scope of the above exemption. Is it all of (a)-(d), or one of (a)-(c) plus (d)?

The Ministry agrees that the word "or" should appear at the end of clause (b). Alternatively, it thinks that it would be more appropriate to deal with principal and accessory uses or buildings in separate provisions. It says that the need to amend the order will be considered further.

APPENDICES

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- APPENDIX B: Standing Order 106(k) of the Legislative Assembly of Ontario
- APPENDIX C: List of Acts under whose authority ten or more regulations were filed in 1994
- APPENDIX D: List of Ministries and other authorities (as currently organized), and the number of regulations filed in 1994 for which each is responsible
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- APPENDIX F: List of Ministries and other authorities (as currently organized), and the number of regulations filed in 1995 for which each is responsible

APPENDIX A

Regulations Act, s. 12

12(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection (3).

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his or her administration.

(5) The Standing Committee on Regulations shall, from time to time, report to the Assembly its observations, opinions and recommendations.

APPENDIX B

Standing Order 106(k) of the Legislative Assembly of Ontario

106. Within the first 10 Sessional days following the commencement of each Session in a Parliament the membership of the following standing committees shall be appointed for the duration of the Session:

(k) Standing Committee on Regulations and Private Bills . . . to be the Committee provided for by section 12 of the *Regulations Act*, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

(i) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;

(ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;

(iii) Regulations should be expressed in precise and unambiguous language;

(iv) Regulations should not have retrospective effect unless clearly authorized by statute;

(v) Regulations should not exclude the jurisdiction of the courts;

(vi) Regulations should not impose a fine, imprisonment or other penalty;

(vii) Regulations should not shift the onus of proof of innocence to a person accused of an offence;

(viii) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and

(ix) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the *Regulations Act*,

but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

APPENDIX C

List of Acts under whose authority ten
or more regulations were filed in 1994

ACT	NO. OF REGULATIONS
Crop Insurance Act (Ontario)	53
Planning Act	53
Highway Traffic Act	44
Provincial Offences Act	27
Health Insurance Act	24
Environmental Protection Act	20
Farm Products Marketing Act	19
Assessment Act	16
Courts of Justice Act	16
Education Act	16
Municipal Boundary Negotiations Act	16
Administration of Justice Act	15
Game and Fish Act	14
Liquor Licence Act	13
Petroleum Resources Act	13
Environmental Assessment Act	11
Farm Products Grades and Sales Act	10
Health Protection and Promotion Act	10
Occupational Health and Safety Act	10
Social Contract Act, 1993	10

APPENDIX D

**List of Ministries and other authorities (as currently organized),
and the number of regulations filed in 1994
for which each is responsible**

MINISTRY/AUTHORITY	NO. OF REGULATIONS
Ministry of Health	141
Ministry of Municipal Affairs and Housing	107
Ministry of Agriculture, Food and Rural Affairs	105
Ministry of Attorney General	74
Ministry of Finance	65
Ministry of Natural Resources	55
Ministry of Transportation	53
Ministry of Consumer and Commercial Relations	49
Ministry of Environment and Energy	48
Ministry of Community and Social Services	34
Ministry of Education and Training	32
Ministry of Labour	25
Management Board of Cabinet	7
Ministry of Citizenship, Culture and Recreation	6
Ministry of Solicitor General and Correctional Services	6
Ministry of Economic Development, Trade and Tourism	6
Ministry of Northern Development and Mines	4
Office of Francophone Affairs	2

APPENDIX E

**List of Acts under whose authority ten
or more regulations were filed in 1995**

ACT	NO. OF REGULATIONS
Planning Act	85
Crop Insurance Act (Ontario)	42
Highway Traffic Act	33
Forest Fires Prevention Act	18
Courts of Justice Act	15
Game and Fish Act	14
Health Insurance Act	14
Milk Act	12
Education Act	12
Environmental Protection Act	12
Farm Products Marketing Act	10

APPENDIX F

**List of Ministries and other authorities (as currently organized),
and the number of regulations filed in 1995
for which each is responsible**

MINISTRY/AUTHORITY	NO. OF REGULATIONS
Ministry of Municipal Affairs and Housing	121
Ministry of Agriculture, Food and Rural Affairs	86
Ministry of Health	70
Ministry of Transportation	45
Ministry of Attorney General	41
Ministry of Natural Resources	41
Ministry of Finance	33
Ministry of Consumer and Commercial Relations	27
Ministry of Environment and Energy	25
Ministry of Community and Social Services	20
Ministry of Education and Training	15
Ministry of Labour	9
Ministry of Solicitor General and Correctional Services	6
Ministry of Citizenship, Culture and Recreation	4
Management Board of Cabinet	3
Ministry of Northern Development and Mines	3



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